

1 REMARKS

2 Subheading Status of the Claims

3 Claims 1- 36 are now pending in the present application, Claims 1, 19, 24, 31, and 36 having
4 been amended above.

5 Claims Rejected Under 35 U.S.C. § 102(e)

6 The Examiner has rejected Claims 1, 2, 4-8, 10, 11, 14-21, 22-27, 29, 30, 33, 34, and 36 as
7 being anticipated by U.S. Patent No. 6,128,279 (O'Neil et al., hereinafter referred to as "O'Neil").
8 The Examiner asserts that O'Neil describes each element of applicants' claimed invention.
9 Applicants respectfully disagree for the reasons noted below.

10 In the interest of reducing the complexity of the issues for the Examiner to consider in this
11 response, the following discussion focuses on independent Claims 1, 19, 24, and 36. The
12 patentability of each dependent claim is not necessarily separately addressed in detail. However,
13 applicants' decision not to discuss the differences between the cited art and each dependent claim
14 should not be considered as an admission that applicants concur with the Examiner's conclusion that
15 these dependent claims are not patentable over the cited references. Similarly, applicants' decision
16 not to discuss differences between the prior art and every claim element, or every comment made by
17 the Examiner, should not be considered as an admission that applicants concur with the Examiner's
18 interpretation and assertions regarding those claims. Indeed, applicants believe that all of the
19 dependent claims patentably distinguish over the references cited. However, a specific traverse of the
20 rejection of each dependent claim is not required, since dependent claims are patentable for at least
21 the same reasons as the independent claims from which the dependent claims ultimately depend.

22 Discussion of the Rejection of Independent Claim 1

23 With regard to independent Claim 1, a significant difference exists between O'Neil and
24 applicants' invention, because Claim 1 as amended generally includes a step from Claim 12 that
25 O'Neil clearly does not teach or suggest. Step (d) recites "designating the second resource as the new
26 intake *and providing an intake message from the first resource to the plurality of resources in the*
27 *cluster identifying the second resource as the intake,*" (emphasis added). The Examiner asserts that
28 O'Neil teaches the equivalency of step (a) of Claim 12 because O'Neil teaches providing
29 informational messages in column 3, lines 42-43. The Examiner asserts that although O'Neil does
30 not specifically teach the process of having the first resource announce that the second resource has

1 been designated when that event occurs, it would have been obvious to one of ordinary skill in the art
2 to modify O'Neil to include the ability for resources to announce intake designations of other
3 resources, because this ability is a simple convenience and constitutes a design choice rather than a
4 patentable distinction.

5 However, applicants respectfully disagree with the Examiner's assertion that it would have
6 been obvious to include the ability for resources to announce intake designations of other resources.
7 O'Neil discloses that "A network server according to a related aspect of the invention exchanges
8 *information* with its peers *regarding their respective loads*" (emphasis added, O'Neil, column 3,
9 lines 34-36). In addition, O'Neil teaches that "[I]n a preferred embodiment of the invention, *each*
10 *server multicasts its load information* to its peers at a regular period (e.g., 500 ms)" (emphasis added,
11 O'Neil, column 3, lines 41-43). Further, O'Neil teaches that "[T]he most critical decision, i.e.,
12 whether to consider rerouting, is preferably made based on the most current information available
13 (i.e., based on a *local server load* provided nearly instantaneously from within the server and without
14 any network transmission latency)" (emphasis added, O'Neil, column 3, lines 52-57). Thus, it can be
15 inferred that "load information" includes for example, such parameters as the percentage capacity at
16 which the server is operating, or the number of jobs that are being processed by the server, or a
17 predetermined level that is not to be exceeded. While it may be true that the type of additional
18 information related to "load information," would be a design choice and could include, for example,
19 information such as an indication from the server that additional jobs could be processed by the
20 server. However, the step of *the first resource providing to the other resources, the identification of*
21 *the second resource as the intake*, is not related to load information. This type of information is more
22 systems management information that is very different from "load information." Thus, the provision
23 of this notification in applicants' claim recitation is a patentable distinction, and not merely a design
24 choice.

25 Accordingly, the rejection of independent Claim 1 in view of O'Neil should be withdrawn.
26 Because dependent claims include all of the elements of the independent claim from which the
27 dependent claims ultimately depend, dependent Claims 2-18 are patentable for at least the reasons
28 discussed above in regard to independent Claim 1. Thus, the rejection of dependent Claims 2-18
29 under 35 U.S.C. § 102(e) should be withdrawn.
30

1 Discussion of the Rejection of Independent Claim 19

2 Independent Claim 19 is directed to a system for distributing a processing load in a cluster.
3 Clearly, for the same reasons already noted above in regard to independent Claim 1, this claim as
4 amended also distinguishes over O'Neil, because O'Neil does not teach or suggest providing an
5 intake message from the first resource to the plurality of resources in the cluster, for identifying the
6 second resource as the intake. Accordingly, the rejection of independent Claim 19 under
7 35 U.S.C. § 102(e) over O'Neil should be withdrawn for the reasons discussed above. Because
8 dependent claims include all of the elements of the independent claim from which the dependent
9 claims ultimately depend and because O'Neil does not teach or suggest all of the elements of
10 independent Claim 19, the rejection of dependent Claims 20-23, under 35 U.S.C. § 102(e) over
11 O'Neil should also be withdrawn, for at least the same reasons as the rejection of Claim 19.

12 Discussion of the Rejection of Independent Claim 24

13 Independent Claim 24 is directed to a method of distributing a processing load among a
14 cluster of nodes, each node providing at least one of a plurality of different types of services. Clearly,
15 for the same reasons already noted above in regard to independent Claim 1, this claim as amended
16 also distinguishes over O'Neil, because O'Neil does not teach or suggest providing an intake message
17 from the first node designated as the intake for the first instance, to the nodes in the cluster identifying the
18 second instance as the new intake for the first type of service. Accordingly, the rejection of independent
19 Claim 24 under 35 U.S.C. § 102(e) over O'Neil should be withdrawn based on the reasons discussed
20 above. Because dependent claims include all of the elements of the independent claim from which
21 the dependent claims ultimately depend, and because O'Neil does not teach or suggest all of the
22 elements of independent Claim 24, the rejection of dependent Claims 25-35, under
23 35 U.S.C. § 102(e) over O'Neil should also be withdrawn, for at least the same reasons as the
24 rejection of Claim 24.

25 Discussion of the Rejection of Independent Claim 36

26 Independent Claim 36 is directed to a system for distributing a processing load in a cluster of
27 resources. But O'Neil fails to teach or suggest providing an intake message from a first resource to a
28 plurality of resources in a cluster identifying a second resource as an intake. Clearly, for the same
29 reasons already noted above in regard to independent Claim 1, this claim, as amended, also
30

1 distinguishes over O'Neil. Accordingly, the rejection of independent Claim 36 under
2 35 U.S.C. § 102(e) over O'Neil should be withdrawn.

3 Claims Rejected under 35 U.S.C. § 103(a)

4 Claims 12, 13, 31, and 32 are rejected under 35 U.S.C. § 103(a) as being unpatentable over
5 O'Neil. However, claims 12-13 depend from independent Claim 1, which is patentable for the reasons
6 discussed above, while Claims 31 and 32 depend from independent Claim 24, which is also patentable
7 for the reasons discussed above. Because dependent claims include all of the elements of the
8 independent claim from which the dependent claims depend, dependent Claims 12-13 and Claims 31
9 and 32 are patentable for at least the same reasons discussed above with regard to independent Claim 1.
10 Accordingly, the rejection of dependent Claims 12-13 and Claims 31 and 32 under 35 U.S.C. § 103(a)
11 over O'Neil should be withdrawn.

12 Claims 3, 9, 28, and 35 are rejected under 35 U.S.C. § 103(a) as being unpatentable over O'Neil
13 in view of U.S. Patent No. 5,031,089 (Liu et al., hereinafter referred to as "Liu"). The Examiner asserts
14 that it would have been obvious to one of ordinary skill in the art to combine the embodiments of
15 O'Neil and Liu's inventions, because they are from the same field of endeavor – namely load balancing
16 servers. However, Claims 3 and 9 depend from independent Claim 1, which is patentable for the
17 reasons discussed above. Claims 28 and 35 depend from independent Claim 24, which is patentable for
18 the reasons discussed above. Because dependent claims are considered to include all of the elements of
19 the independent claims from which the dependent claims depend, dependent Claims 3 and 9 and
20 Claims 28 and 35 are patentable for at least the same reasons discussed above with regard to
21 independent Claim 1 and 24, respectively. Accordingly, the rejection of dependent Claims 3 and 9 and
22 Claims 28 and 35 under 35 U.S.C. § 103(a) over O'Neil should be withdrawn.

23 In view of the Remarks set forth above, it will be apparent that the claims in this application
24 define a novel and non-obvious invention, and that the application is in condition for allowance and
25 should be passed to issue without further delay. Should any further questions remain, the Examiner
26 is invited to telephone applicants' attorney at the number listed below.

27 Respectfully submitted,

28 *Ron Anderson*
29

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1 RMA/SKM:lrg

3 EXPRESS MAIL CERTIFICATE

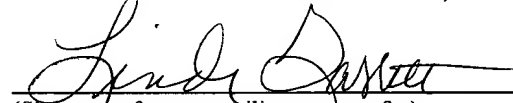
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